

STATE OF HAWAII  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
Public Works Division

November 9, 2012

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

OAHU

Issuance of a sublease to BWB Consultants, Inc. dba Grand Café & Bakery for a restaurant, bar and grill, including related activities such as catering for events; retail and office use at the No. 1 Capitol District (formerly the Hemmeter Building), Honolulu, Oahu, Tax Map Key: (1) 2-1-17-001.

APPLICANT:

BWB Consultants, Inc., dba Grand Café & Bakery, P.O. Box 61815, Honolulu, Hawaii 96839-1815, as sublessee or tenant.

CONTROLLING AGENCY AND LEGAL REFERENCE:

DAGS is the lessee under a Chapter 37D, Hawaii Revised Statutes (HRS) financing agreement, which was used to purchase the building around December 2000. Funds for the purchase were raised through the issuance of certificates of participation (COPs). When all lease payments are made over the 20 year term, title to the property will be transferred to the Board of Land and Natural Resources (BLNR). The BLNR will then be asked to recommend to the Governor, the set aside of the property to DAGS.

Under Chapter 26-6, HRS, DAGS has the authority to operate and manage public buildings. The Friends of HISAM (Hawaii State Art Museum) was established as a nonprofit group pursuant to Chapter 9-23, HRS, to work effectively with DAGS, and the State Foundation on Culture and the Arts (SFCA) to enhance and support the work of the Hawaii State Art Museum, its ancillary programs, and amenities. The statute allows the Friends of HISAM to operate concessions or other for-profit business enterprises within or on the grounds of the Hawaii State Art Museum as directed by the SFCA, or to enter into contracts as approved by and with SFCA, for the operation of such enterprises. Funds generated by the Friends of HISAM shall be used as supplemental funds that may be expended for the following purposes:

1. Employing personnel as required to operate and maintain the museum and ancillary programs for education, cultural, and promotional purposes;
2. Planning and development of state art museum programs;
3. Construction, repairs, replacements, additions, and extensions of state art museum facilities;

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- 4. Operational and maintenance costs of state art museum and ancillary programs and amenities;
- 5. Administrative costs of the state art museum; and
- 6. Doing other things necessary to accomplish the purposes of this chapter, including the adoption, amending, or repeal of rules pursuant to chapter 91.

ZONING:

State Land Use District: Urban and located in the Capitol Special Design District  
 City & County of Honolulu  
 CZO: BMX-4 (Central Business mixed use)

TRUST LAND STATUS:

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES \_\_\_\_\_ NO  X

CURRENT USE STATUS:

Various state agencies currently occupy the building's leasable space, including the SFCA, which is administratively attached to DAGS. The Hawaii State Art Museum occupies a major portion of the 2<sup>nd</sup> floor and is run and operated by SFCA. Another commercial tenant, Showcase Hawaii Productions, Inc. operates a gift shop on the ground floor, adjacent to this restaurant space.

LOCATION AND AREA: See Exhibit A

The Premises is located on a portion of the ground floor of the No. 1 Capitol District, comprising approximately 1,222 square feet (kitchen 842 s.f., office/storage 380 s.f.).

The tenant will be operating a counter service, and will not have the exclusive use of both the café seating area (1,434 s.f.) which is adjacent to the kitchen, and the poolside seating area (1,005 s.f.). However, tenant will have the option at any time to rent the café seating area for its exclusive use at an additional cost.

TERM:

Fifty-nine (59) months, commencing after the approval of this sublease by the Board of Land and Natural Resources. Sublessee has an option to extend the term of the lease for an additional fifty-nine (59) months.

RENT AMOUNT:

Initial Period of 59 months - The proposed monthly rent is:

Base Rent: \$3,788.20 per month (\$3.10 per s.f.), AND  
 Percentage Rent: Seven percent (7%) of sublessee's gross sales over the breakpoint (\$54,117.14) for food, beverages, goods, liquor, wares, merchandise

sold, leased, or catered both on or off the Premises.

The base rent, and percentage rent breakpoint will increase, should the tenant exercise its option to lease the café seating area (1,434 s.f.) for its exclusive use. However, these terms are pending final negotiations.

Extension Period of 59 months - Should the tenant exercise its option to extend, the monthly rent is:

Base Rent; \$4,167.02 per month (\$3.41 per s.f.), AND  
Percentage rent: Seven percent (7%) of sublessee's gross sales as defined above, over the breakpoint (\$59,528.86).

The base rent, and percentage rent breakpoint will increase, should the tenant exercise its option to lease the café seating area (1,434 s.f.) for its exclusive use. However, these terms are pending final negotiations.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The controlling agency shall be responsible for ensuring compliance with Chapter 343, HRS.

DCCA VERIFICATION:

Place of business registration confirmed: Yes  No   
Registered business name confirmed: Yes  No   
Applicant in good standing confirmed: Yes  No

REMARKS:

The sublease with the former sublessee (Slow Down Town LLC, dba Down Town at the HISAM) expired, and the sublessee vacated September 2012.

Both DAGS and The Friends of HISAM will be designated collectively as sublessors or landlords. A separate agreement is being prepared to identify specific costs and responsibilities between DAGS and the Friends of HISAM.

This sublease with BWB Consultants, Inc., dba Grand Café & Bakery will be subject to the terms and conditions of the Lease Purchase Agreement, which is the financing lease that the State entered into to acquire the property. If there are any conflicts between this sublease and the Lease Purchase Agreement, the terms of the Lease Purchase Agreement shall prevail.

Under the lease financing arrangement using certificates of participation (COP), investors receive exemptions from federal income tax. This exemption can be jeopardized should the State permit an excessive amount of non-government use in the building. DAGS has reviewed this proposed leasing arrangement with the Department of Budget & Finance's General Advice Counsel for compliance and to maintain tax benefits for the investors.

RECOMMENDATION:

That the Board consent to the sublease by DAGS and the Friends of HISAM, as sublessor, and BWB Consultants, Inc., dba Grand Café & Bakery, as sublessee, subject to any applicable conditions cited above which are by this reference incorporated herein and further subject to the following:

1. Review and approval by the Department of the Attorney General as to form for the new sublease;
3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



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Dean H. Seki,  
Comptroller

APPROVED FOR SUBMITTAL:



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William J. Aila, Jr., Chairperson

Richards Street

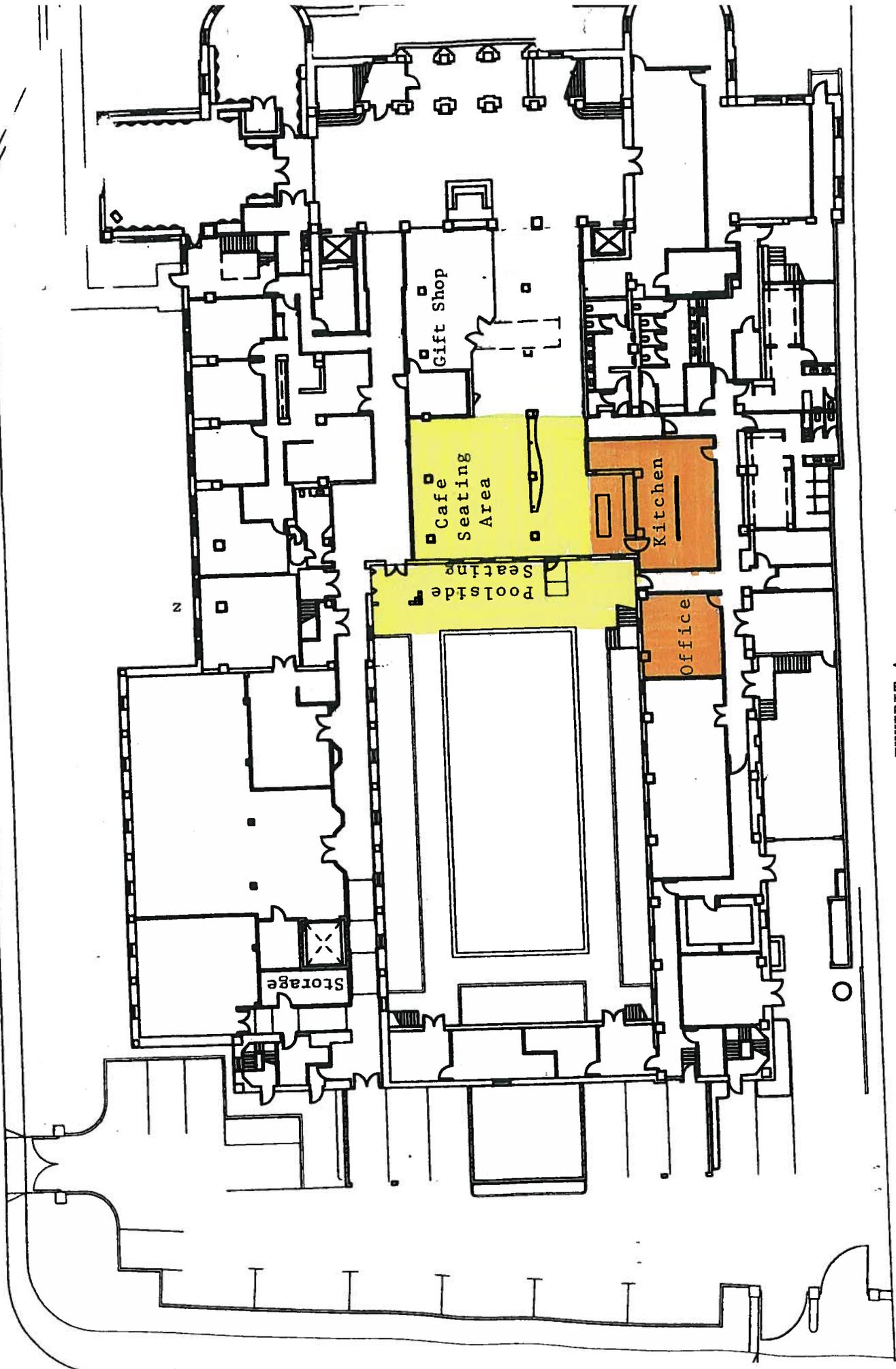


EXHIBIT A

